

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JASON KUTCHINSKI,
as parent and next friend to H.K.,
a minor,
Plaintiff,

Case No.: 19-13810
Honorable Judith Levy

REPLY

v.

FREELAND COMMUNITY
SCHOOL DISTRICT,

MATTHEW A. CAIRY,
in his official and individual capacity,

and

TRACI L. SMITH,
in her official and individual capacity,
Defendants

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REPLY

The argument that Defendants cannot release information without a subpoena or court order is not an unreasonable reading. Plaintiffs' counsel offered to enter a pro forma order work around that barrier. However, Defendants' actually want more than mere compliance with FERPA—they want a greater protective order which deems the needed information as part of “Confidential Documents” with some vague notion of contempt for violating that undefined label of confidentiality. FERPA does not require that; Plaintiff is not willing to be voluntarily hamstrung from presenting likely key evidence. Frankly, the information being sought is not objectively private or confidential anyways. E.g. **ECF No. 31-2, ¶3** (seeking student witnesses' names together with their respective parent's full name, address, and telephone number). FERPA is regularly commented by legal scholars as being an abused law. Frank D. Lomonte, *Student Privacy Laws Have Been Distorted (And That's a Problem)*, EDU WEEK, Mar 16, 2018, available at <https://bit.ly/3spvUuz>. FERPA is self-interestedly invoked when schools want to preclude providing information which is adverse to the institution and not really a student privacy issue. **ECF No. 31-2, ¶3** (asserting FERPA protects the names of students and their parents who are needed witnesses to this case). Yet, they regularly publish publicly the same information when it is self-congratulatory. E.g.

<https://twitter.com/FCSD/status/1459253287908163588> (identifying student and parents).

The needed solution here is simple. Enter Plaintiff's proposed order and leave the concerns for privacy redactions to the future date if the information is later needed to be submitted on the Court's docket. See e.g. FRCP 5.2; see also ED Mich LR 5.3.

RELIEF REQUESTED

WHEREFORE, the Court is requested to overrule the objection of Defendants premised on FERPA and enter a reasonable order (without any sanctions) compelling Defendants to provide all the responsive information and documents without their proposed protective limitations.

Date: December 22, 2021

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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CERTIFICATE OF SERVICE

I hereby certify that on date stated below, I filed the foregoing document with the ECF/CM system which will serve an email copy of the same to all counsel of record (at their email address of record) on the date stated below.

Date: December 22, 2021

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

OUTSIDE LEGAL COUNSEL PLC

PHILIP L. ELLISON (P74117)

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